

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1417

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
pgs

NO. 76-1417

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

v.

FRANK KINSLER

DEFENDANT-APPELLANT

APPENDIX TO BRIEF OF DEFENDANT-APPELLANT

NOV 23 1976

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>PAGE</u>
I. INDICTMENT	A - 1
II. DOCKET ENTRIES	A - 5
III. AFFIDAVIT IN SUPPORT OF APPLICATION FOR INTERCEPTION OF ORAL AND WIRE COMMUNICATIONS	A - 14
IV. MEMORANDUM OF DECISION RE MOTIONS TO DISMISS AND SUPPRESS, DATED FEBRUARY 17, 1976	A - 31
V. ORDER AUTHORIZING USE OF INTERCEPTED WIRE AND ORAL COMMUNICATIONS, DATED MARCH 16, 1976	A - 50

RECEIVED

MAY 23 1974

OFFICE OF THE FEDERAL
PUBLIC DEFENDER, N.H.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
MAY 3 11 14 AM '74
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES OF AMERICA

v.

DANIEL VALERIANO, CHARLES FURMAN,
CATHERINE BROWN, a/k/a Catherine
Jones, CLIFTON ADAMS, ELLSWORTH
BELL, FRANK KINSLER, FRANK AMENDOLA,
a/k/a "Alfie"

CRIMINAL NO. N-74-48

*upon books notify court
of tentative schedule to discovery
books to file any motion.*

I N D I C T M E N T

The Grand Jury charges:

COUNT ONE

From on or about January 1, 1973 and continuously thereafter through on or about July 16, 1973 at New Haven, Connecticut and elsewhere in the District of Connecticut, DANIEL VALERIANO, CHARLES FURMAN, CATHERINE BROWN, a/k/a "Catherine Jones", CLIFTON ADAMS, ELLSWORTH BELL, FRANK KINSLER, FRANK AMENDOLA, a/k/a "Alfie", the defendants herein, and Bennie Maye, Henry Williams, and others unknown to the grand jury did knowingly and wilfully own, conduct, manage, supervise and direct all or part of an illegal gambling business in concert with each other, to wit, a bookmaking business involving a numbers or policy operation such business being in substantially continuous operation for a period in excess of thirty (30) days, and having a gross revenue of \$2,000 or more on one or more single days, involving five (5) or more persons in its conduct, management, supervision and direction, and being in violation of the laws of the

State of Connecticut, to wit, Connecticut General Statutes, Title 53, Section 298, as amended, Connecticut Public Act 865, Section 26 (1971 Sess.).

All in violation of Title 18, United States Code, Sections 1955 and 2.

COUNT TWO

1. From on or about January 1, 1973 and continuously thereafter until on or about July 16, 1973, at New Haven, Connecticut and elsewhere in the District of Connecticut, DANIEL VALERIANO, CHARLES FURMAN, CATHERINE BROWN, a/k/a "Catherine Jones", CLIFTON ADAMS, ELLSWORTH BELL, FRANK KINSLER, FRANK AMENDOLA, a/k/a "Alfie", the defendants herein, and Bennie Maye, Henry Williams did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other and with diverse other persons, whose names are unknown to the Grand Jury, to commit an offense against the United States, to wit, to violate Title 18, United States Code, Section 1955.

2. It was the object of the conspiracy that the defendants would conduct, finance, manage, supervise and own, all or part of an illegal gambling business, which was in violation of the laws of the State of Connecticut, to wit, and which involved five (5) or more persons who conduct, finance, manage, supervise, direct or own all or part of such business and which had a gross revenue of \$2,000 or more in a single day and which was in substantially continuous operation for a period in excess of thirty (30) days.

OVERT ACTS

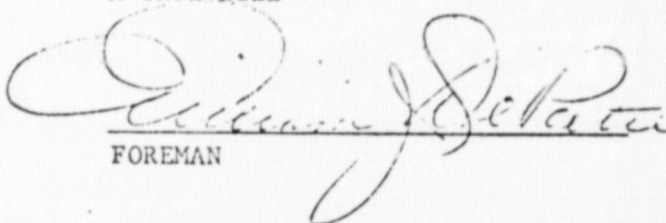
In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the District of Connecticut:

1. On January 17, 1973 at approximately 10:40 a.m., DANIEL VALERIANO, a defendant herein, spoke on the telephone.
2. On January 19, 1973 at approximately 9:59 a.m. DANIEL VALERIANO, a defendant herein, spoke on the telephone.
3. On January 20, 1973 at approximately 7:06 p.m. DANIEL VALERIANO, a defendant herein, spoke on the telephone with an individual known as "Alfie".
4. On January 20, 1973 at approximately 9:03 p.m. DANIEL VALERIANO called on the telephone and spoke with "Henry".
5. On January 22, 1973 at approximately 12:09 p.m. DANIEL VALERIANO, a defendant herein, spoke on the telephone with "Alfie"
6. On January 24, 1973 at approximately 11:44 a.m. DANIEL VALERIANO, a defendant herein, spoke on the telephone with "Alfie".
7. On January 27, 1973 at approximately 8:41 p.m. DANIEL VALERIANO, a defendant herein, spoke on the telephone with "Mike".
8. On January 17, 1973 at approximately 12:30 p.m. CHARLES FURMAN, a defendant herein, spoke on the telephone with "Cliff".
9. On January 17, 1973 at approximately 2:36 p.m. CATHERINE JONES, a defendant herein, spoke on the telephone with a "Miss Grady".
10. On January 26, 1973 at approximately 2:43 p.m. CHARLES FURMAN, a defendant herein, spoke on the telephone with "Frank".

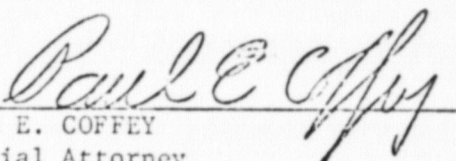
11. On January 27, 1973 at approximately 4:21 p.m. CHARLES FURMAN, a defendant herein, spoke on the telephone with "Alfie".

ALL IN VIOLATION OF SECTION 371, TITLE 18, UNITED STATES CODE.

A TRUE BILL


FOREMAN

STEWART H. JONES
UNITED STATES ATTORNEY


PAUL E. COFFEY
Special Attorney
United States Department of Justice

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.:
vs.		Stewart H. Jones, U.S. Atty
DANIEL VALERIANO		Paul E. Coffey, Spec. Atty
CHARLES FURMAN cop 7/12/76		450 Main Street
sent. 7/12/76 CATHERINE BROWN		Hartford, Conn.
a/k/a Catherine Jones		<i>Peter Casey</i>
CLIFTON ADAMS cop 7/12/76		
ELLSWORTH BELL cop 7/12/76		
FRANK KINSLER cop 7/12/76		For Defendant:
FRANK AMENDOLA	Valeriano:	Anthony J. Lasala, Esq.
a/k/a "Alfie"	31 Whitney Av.	205 Church Street

KINSLER: Thomas D. Clifford (apptd) AMENDOLA: Roger J. Frechette
Federal Public Defender 215 Church Street
770 Chapel Street 799 Main Street New Haven, Conn.
New Haven, Conn. Hartford, Conn.

ADAMS: Anthony G. Apicella BELL: Richard E. Gruskin
109 Church Street Gruskin & Gruskin
~~WITHDRAWN~~ New Haven, Conn. 56 Huntington Street
New London, Conn. 06320

BROWN: Garter La. Trade (apptd) Max Stuart Case
Thompson, Blair & Barclay FURMAN: John A. Berch
205 Church Street Gitlitz, Ronal & Berch
New Haven, Conn. 81 Broad Street
Milford, Conn.

BELL: Gerald P. Dwyer JUS: W. Paul Flynn Appt.
246 Church Street 122 Temple Street
New Haven, Connecticut New Haven, Conn.

BROWN: Andrew L. Boynton (appt 7/12/76)
770 Chapel Street
New Haven, Conn.

with each other, to wit, a bookmaking business involving numbers or policy operation, in violation of laws of State of Connecticut, and conspiring to commit offense against the United States. Bench Warrants to issue for each defendant, with bonds to be set by U.S. Magistrate. Indictment to be sealed until all warrants are served but not to exceed 30 days. Clarie, J. m-5/6/74.

5/3 Bench Warrant issued in duplicate for each defendant and together with certified copy of the Indictment handed to U.S. Marshal in Hartford for service.

5/16 Magistrate's papers, filed: Record of proceedings; Warrants of Arrest, with Marshal's returns thereon (defendants Valeriano, Furman, Brown, Adams, Kinsler, Amendola). Defendants released on personal recognizance.

5/22 Motion to Unseal, filed by the government.

5/24 CJA Form 20 appointing Attorney Robert H. Boynton to represent

DATE	PROCEEDINGS
1974	
6/7	ADAMS: Appearance of Anthony G. Apicella, Esq., entered for defendant.
6/10	BELL: PLEA: Over to June 24, 1974. Zampano, J. m-6/10/74.
6/10	BROWN: PLEA: Over to June 24, 1974. Court appoints Thomas D Clifford, Federal Public Defender, to represent defendant. Zampano, J.
6/10	AMENDOLA: PLEA: Plea of <u>not guilty</u> entered to Counts 1 and 2. Appearance of Roger Frechette, Esq., entered for defendant. Three weeks for filing motions after unsealing of tapes. Zampano, J. m-6/10/74.
6/10	ADAMS: PLEA: Plea of <u>not guilty</u> entered to Counts 1 and 2. Three weeks for filing motions after unsealing of tapes. Zampano, J. m-6/10/74.
6/10	VALERIANO: PLEA: Plea of <u>not guilty</u> entered to Counts 1 and 2. Three weeks for filing motions after unsealing of tapes. Zampano, J. m-6/10/74.
6/10	FURMAN: PLEA: Over to June 24, 1974. Zampano, J. m-6/10/74.
6/11	KINSLER: PLEA: Plea of <u>not guilty</u> entered to Counts 1 and 2. Case continued on same bond for trial. Counsel are to confer on discovery proceedings and within three weeks are to notify the Court of scheduling; thereafter defendant has two weeks within which to file motions.
6/10	KINSLER: PLEA: Over to 6/11/74. Zampano, J. m-6/11/74.
6/11	Court Reporter's Notes of proceedings held on June 10, 1974 (P filed. Defts. Adams, Brown, Furman, Bell, Amendola & Valeriano. Rus
6/11	BELL: Appearance of Richard E. Gruskin, Esq., entered for defendant.
6/21	Following endorsement on Government's Motion to Unseal all papers currently under seal, and that all stenographic notes currently under seal be transcribed and filed with the Clerk of the Court: Motion granted. Zampano, J. m-6/21/74. Copies mailed to counsel.
6/21	Appearance of Carter LaPrade, Esq., entered for defendant Brown.
6/24	Court Reporter's notes impounded at in camera hearings were sent to Mr. Sperber, Mr. Winkler, Mrs. Palanza, Mrs. Beecher and Mr. Gale for transcription, together with copy of Order re Motion to Unseal.
6/18	CJA Form 20 appointing Carter LaPrade, Esq., to represent defendant Brown, filed. Zampano, J. Copies distributed.
6/24	FURMAN: PLEA: Marked over to June 28, 1974 at 10:30 a.m. Zampano, J. m-6/24/74.
6/24	BROWN: PLEA: Marked over to June 28, 1974 at 10:30 a.m. Zampano, J. m-6/24/74.
6/24	BELL: PLEA: Plea of <u>not guilty</u> entered to Counts 1 and 2. Case continued on same bond for trial. Motions to be filed 3 weeks after conference among counsel. Zampano, J. m-6/24/74.
6/27	Court Reporter's Notes of In Camera Conference held in Chambers of Hon. T. Emmet Clarie, filed. Collard, R. (Impounded)
6/27	Court Reporter's Transcript of proceedings of June 29, 1973 held in camera prior to Indictment being filed, filed. Collard, R.
6/28	Appearance of John A. Parese, Esq., entered for defendant FURMAN
6/28	FURMAN: PLEA: Plea of <u>not guilty</u> entered to Counts 1 and 2 by defendant. Zampano, J. m-6/28/74.
6/28	BROWN: PLEA: Plea of <u>not guilty</u> entered to Counts 1 and 2 by defendant. Zampano, J. m-6/28/74.
7/1	Notice of Readiness for trial, filed by the Government.
	BROWN & FURMAN: Court Reporter's Notes of proceedings held on June 28, 1974 (Pleas), filed. Russell, R. (Continued)

DATE	PROCEEDINGS
1974	
7/5	Court Reporter's Transcript of proceedings held in camera in Chambers of Hon. Thomas F. Murphy on Jan. 15, 1974, prior to filing of the Indictment, filed. Palanza, R.
7/11	KINSLER: Notice of compliance with Standing Order for Discovery filed by defendant.
7/22	Court Reporter's Transcript of proceedings held in camera in Chambers of Hon. Jon O. Newman on April 25, 1973, prior to filing of the Indictment, filed. Gale, R.
7/26	KINSLER: Notice of compliance with Standing Order for Discovery filed by defendant.
7/29	ADAMS: Motion to Withdraw as Counsel for defendant, filed by Attorney Robert H. Boynton.
7/30	Court Reporter's Transcript of proceedings held in camera in Chambers of Hon. Thomas F. Murphy on May 22, 1973, prior to filing of the Indictment, filed. Beecher, R.
8/8	Order filed and entered granting Attorney Boynton's Motion to Withdraw as Counsel for defendant. Zampano, J. m-8/8/74. Copies mailed to counsel.
8/9	Discovery and Inspection: Identification of Speakers, filed by the Government.
8/14	Court Reporter's Transcript of proceedings held in camera in Chambers of Hon. Thomas F. Murphy on January 31, 1973, filed. Winkler, R.
8/15	AMENDOLA: Motion to Dismiss, filed by defendant.
8/16	KINSLER: Motion to Dismiss, filed by defendant.
"	KINSLER: Motion to Dismiss Count Two, filed by defendant.
"	KINSLER: Motion to Suppress, filed by the defendant.
8/21	Response of United States to Request for Discovery and Inspection, filed.
9/5	AMENDOLA: Motion for Disclosure of Grand Jury Minutes, filed by defendant.
9/5	AMENDOLA: Motion to Suppress, filed by defendant.
9/5	AMENDOLA: Motion to Dismiss Count Two, filed by defendant.
9/5	AMENDOLA: Motion to Dismiss, filed by defendant.
9/5	VALERIANO: Motion to Suppress, filed by defendant.
9/5	ADAMS: Motion for Bill of Particulars, filed by defendant.
9/5	ADAMS: Motion for Disclosure of Grand Jury Minutes, filed by defendant.
9/5	ADAMS: Motion to Dismiss Count Two, filed by defendant.
9/5	ADAMS: Motion to Dismiss, filed by defendant.
9/5	ADAMS: Motion to Suppress, filed by defendant.
9/5	VALERIANO: Motion to Dismiss, filed by defendant.
9/5	VALERIANO: Motion for Bill of Particulars, filed by defendant.
9/5	BROWN: Motion to Suppress, filed by defendant.
9/5	BROWN: Brief for the Defendant, filed.
9/9	FURMAN: Motion to Dismiss, filed by defendant.
9/9	FURMAN: Motion to Dismiss Count Two, filed by defendant.
9/9	FURMAN: Motion for Disclosure of Grand Jury Minutes, filed by defendant.
9/9	FURMAN: Motion to Suppress, filed by defendant.
9/9	AMENDOLA: Motion for Bill of Particulars, filed by defendant.
9/10	BELL: Motion for Bill of Particulars, filed by defendant.
9/10	BELL: Motion for Disclosure of Grand Jury Minutes, filed by defendant.

(over)

DATE 1974	PROCEEDINGS
9/10	BELL: Motion to Dismiss Count Two, filed by defendant.
9/10	BELL: Motion to Suppress, filed by defendant.
9/10	BELL: Motion to Dismiss, filed by defendant.
*9/5	BROWN: Motion of Discovery and Production, filed by defendant.
9/5	BROWN: Motion for Disclosure of Grand Jury Minutes, filed by defendant.
9/5	BROWN: Motion to Suppress Grand Jury Testimony, filed by defendant.
9/5	BROWN: Motion to Dismiss, filed by defendant.
9/11	FURMAN, BROWN & BELL: Court Reporter's Notes of proceedings held on 6/24/74 (Pleas), filed. Gale, R.
"	FURMAN, BROWN & BELL: Court Reporter's Sound Recording of proceedings held on 6/24/74 (Pleas), filed. Gale, R.
9/17	Notice of Readiness, filed by Government.
"	ADAMS, BROWN, FURMAN, BALL, AMENDOLA & VALERIANO: Court Reporter's Sound Recording of proceedings held on 6/10/74 (Pleas), filed. Russell
	See Commissioner's papers (T-1524) for Grand Jury proceedings re Valeriano, et al.
9/30	ADAMS: Motion for Leave to Amend Motion to Dismiss, filed by defendant.
9/30	ADAMS: Brief in Support of Amended Motion to Dismiss, filed by defendant.
9/30	ADAMS: Brief of Defendant, filed.
9/30	KINSLER: Brief in Support of Motion to Dismiss, filed by defendant.
9/30	FURMAN: Motion for Leave to Amend Defendant's Motion to Dismiss, filed by defendant.
9/30	FURMAN: Brief On Motion to Suppress, Motion to Dismiss, and Motion to Dismiss Count Two for Defendant, filed.
10/3	BELL: Brief in Support of Motion to Dismiss and Suppress, filed by defendant.
10/4	KINSLER: Brief Re Motion to Suppress, filed by defendant.
10/7	KINSLER: Defendant's Motion to Dismiss, Motion to Dismiss Count 2 and Motion to Suppress on RCZ's Misc. Calendar. Marked over. Zampano, J. m-10/7/74.
10/11	KINSLER: Supplemental Brief Re Motion to Suppress, filed by defendant.
10/11	AMENDOLA: Supplemental Brief re Motion to Dismiss, filed by defendant.
10/11	VALERIANO: Defendant's Brief, filed.
10/16	BROWN: Motion for Leave to Amend Motion to Dismiss, filed by defendant.
"	BROWN: Brief in Support of Amended Motion to Dismiss, filed by defendant.
"	BROWN: Supplemental Brief to Brief re Motion to Suppress the Wiretap, Motion to Suppress Grand Jury Testimony and Motion to Dismiss filed by defendant.
10/21	All motions on RCZ's Amended Miscellaneous Calendar in this case marked over to Nov. 18, 1974 at 10:30 a.m. by agreement. Zampano, J. m-10/17/74.
11/5	BROWN: Response of Government to Defendant's Motion to Suppress Her Grand Jury testimony, filed.
11/5	Response of the Government to Defendants' Motions to Suppress, filed.

(continued)

DATE	PROCEEDINGS
1974	
11/5	Response of Government to Defendants' Motion to Dismiss Count Two of the Indictment, filed.
11/5	Response of Government to Defendants' Motion to Inspect Grand Jury Minutes, filed.
11/5	Response of Government to Defendants' Motion for a Bill of Particulars, filed.
11/5	BROWN, ADAMS, FURMAN: Response of Government to Defendants' Motions to Dismiss the Indictment, filed.
11/12	VALERIANO: Supplemental Brief Re: Motion to Suppress, filed by defendant.
11/18	Hearing held on defendant's motions to suppress. Decision reserved. Oral arguments on balance of motions on RCZ's misc. calendar to be held November 22, 1974. at 2:00 P.M. Zampano, R. m-11-18-74
11/19	Court reporter's notes, (Motion to Suppress) of proceedings held Nov. 18, 1974, filed, Russell, R.
11/22	Continued hearing on Pending Motions to Dismiss from Nov. 18, 1974. Decision reserved. All discovery has been completed. Zampano, J. m-11-25-74
12/3	Court Reporter's Notes of proceedings held on 11/22/74, filed. Russell, R.
12/12	BROWN & FURMAN: Court Reporter's Sound Recording of proceedings held on 11/22/74 (Plans), filed. Russell, R.
12/23	BELL: Motion to Withdraw as Counsel for defendant, filed by Attorney Richard E. Gruskin.
12/30	BELL: Order entered on Motion of Richard E. Gruskin to withdraw as Counsel for defendant, granting same, filed and entered. Zampano, J. m-12/30/74. copies mailed to counsel.
1975	
1/8	KINSLER: Supplemental Motion For Discovery and Inspection, filed by defendant
" "	KINSLER: Memorandum in Support of Defendant's Supplemental Motion for Discovery and Inspection, filed by defendant.
1/17	KINSLER: Response of the United States to Defendant's Supplemental Motion for Discovery and Inspection, filed by Government.
3/17	KINSLER: CJA Form 20 appointing, Thomas D. Clifford, Esq. to represent defendant, filed. (Zampano, J) Copies distributed.
3/20	BELL: Appearance of Gerald P. Dwyer, Esq., for the defendant, filed. Copies distributed.
1976	Memorandum of Decision, filed and entered: All motions to dismiss are denied, All motions to Suppress are denied, The Motions for disclosure of Grand Jury Minutes are denied, All motions for Discovery and Inspection are denied. The motions for bills of Particulars are denied with the exceptions noted hereinbefore. Zampano, J. m-2/18/76 copies mailed to counsel of record.
3/9	Supplemental Response of the United States to Defendants' Motion for a Bill of Particulars, filed by govt.
3/11	BELL: Motion for leave to withdraw appearance on behalf of BELL, GILTON ADAMS, filed by Attorney Apicella.
3/15	BELL: Application for authorization to use the contents of intercepted wire communications re: violation of 26 U.S.C. 7201 by Daniel Valeriano, in the proceedings held under the authority of the U.S. Grand Jury and on a judicial subdivision thereof as provided by Section 8712(a), 18 U.S.C., filed by govt.
4/15	Order, filed and entered, it is ordered pursuant to

DATE	PROCEEDINGS
3/1	The provisions of 18 USC 251 (5), that any person who has received by any means authorized by Chapter 36 of Title 18, U.S.C., any information concerning wire and oral communications, or evidence derived therefrom, intercepted over telephone wires, 293-624-2802 and 293-663-3246, pursuant to orders of Judge Linsley, U.S.D.C., Dist. of Conn., dated Jan. 23, 1977, but relating to offenses other than those specified in the said order, may disclose the contents of said communications and any evidence derived from such communications while giving testimony under oath or a affirmation in any proceeding held under the authority of the U.S. or of any state or political subdivision thereof. Service of this order shall be served upon Daniel Valeriano within five days hereof. Zampano, J. m-7/13/76. Two certified copies handed to U.S. Marshal for service. copies mail to all counsel of record.
3/16	ADAMS: CJA Form 23 (Financial Affidavit), filed by deft. Adams pro se.
3/17	Marshall's return showing service, filed: Order re Valeriano
3/30	ADAMS: Motion for Leave to Withdraw Appearance on Behalf of Defendant Clinton Adams (enforce): Granted. Zampano, J. m-5/30/76. Copies mailed to all counsel of record.
4/2	ADAMS: J. Form 20 substituting W. Paul Flynn, Esq. for Robert Eoynton and Anthony C. Apicella, filed. Zampano, J. copies distributed
4/10	FURN: CJA Form 23 (Financial Affidavit), filed by deft. Furn. Order re Adams: Motion for Leave to Withdraw Appearance on Behalf of Defendant Clinton Adams (enforce): Granted. Zampano, J. m-5/30/76. Copies mailed to all counsel of record.
5/13	Court Reporter's Notes of Proceedings (COP) held on 5/10/76, filed Russell, R.
6/29	ON RCZ Jury Assignment List: Special Assignment 7/13/76. Zampano, J. m-6/30/76.
7/1	KINSLER: Motion for Severance, filed by deft.
7/7	Marshall's return showing service, filed: Subpoena to Produce.
7/9/76	BROWN: Motion to Withdraw as Counsel, filed by Harold Stevens, Esq. together with Affidavit.
7/12	FURMAN: CHANGE OF PLEA: Deft. request leave to change his plea of not guilty entered earlier to Ct. one. Court grants request and orders previous plea erased from the record. Deft. put to plea again pleads guilty to Ct. one. This is a conditional plea. The plea conditions were placed on the record by Court and counsel. Case continued on same bond for sentencing in September. Appearance of Max Stuart Case, filed for the deft. Zampano, J. m-7/12/76.
7/12	CHANGE OF PLEA: BELL: Deft. request leave to change his plea of not guilty entered earlier to Ct. one. Court grants request and orders previous plea erased from the record. Deft. is put to plea again and pleads guilty to Ct. one. This is a conditional plea. The conditions of the plea were placed on the record by Court and counsel. Case continued on same bond for sentencing in September. Zampano, J. m-7/12/76.
7/12	CHANGE OF PLEA: KINSLER: Deft. request leave to change his plea of not guilty entered earlier to Ct. one. Court grants request and orders previous plea erased from the record. Deft. is put to plea again pleads guilty to Ct. one. This is a conditional plea. The conditions of the plea were placed on the record by Court and counsel. Case continued on same bond for sentencing in September. Govt. will dismis

DATE 1976	PROCEEDINGS
7/21	45 (c), 46, 46(a) thru 46(i), 47, 47(a) thru 47(e) and 48, 48(a) thru 48(g) marked for ID. One govt. witness sworn and testified. Govt. Exs. 38, and 49 thru 54 a thru e, filed. 4:25 P. M. Jury excused until 10:30 A.M. of 7/22/76. 4:45 P.M. Court adjourned until 7/22/76 at 10:00 A.M.. Zampano, J. m-7/22/76.
7/22	AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: 10:47 A.M. 10:49 A.M. 13 jurors present. One Govt. witness sworn and testified. Govt. Ex. 55, filed. Govt. witness Connolly previously sworn resumes stand. Govt. Exs. 27 thru 37 made full exs. In the absence of the jury Court hears Motion to Dismiss and Motion to Suppress-motions denied for reasons stated in open Court. Govt. Exs. 39-41 made full exs. Copies of transcript distributed to jurors. Ex. 37 is played to the jurors. 3:32 P.M. Jury excused until 10:30 A.M. of 7/23/76. 3:33 P.M. Court adjourned. Zampano, J. m-7/23/76.
7/23	AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: 10:38 A.M. Motion to Reconsider Deft's Motion Treated as Motion to Strike Testimony and Suppress Evidence, filed by deft. Amendola. Court hears argument on the Motion. Motion to Reconsider is granted but the remaining motions are denied. 10:51 A.M. 13 jurors present. Govt. witness Connolly returns to the stand and narrates the tapes. Govt. Exs. 36, 39, 33, and 34 played for the jury. Motion to Strike Ex. 33 heard at side bar denied w/o prejudice. Deft. Ex. A marked for ID. 3:35 P.M. Jury excused until Tues 9:30A.M. 3:35 P.M. Court adjourned. Zampano, J. m-7/26/76.
7/27	AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: Pen Register Brief, filed by deft. Amendola. Motion to Suppress Evidence & Dismiss Case Against Frank Amendola, filed. Motion denied for reasons stated in open court. 13 jurors present. Govt. witness Connolly resumes stand. 4:30 Court adjourned to 7/28/76 at 10:30 A.M. Zampano, J. m-7/28/76.
7/28	AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: Deft. Amendola's Request to Charge, filed. 13 jurors present. Witness Connolly resumes stand. 3 Govt. witnesses sworn and testified. Deft. Ex. B & C, marked for Id. Govt. Ex. 56, filed. Govt. Ex. 57 thru 63, marked for Id. Deft. Valeriano's Response to Govt. Request, filed. Court hears counsel on Requests to Charge. 4:40 Court adjourned to 7/29/76 at 10:30 A.M. Zampano, J. m-7/29/76.
7/29	AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: At request of Juror #3, Mr. Kent, chambers conference held. Court hears counsel on requests to charge. 13 jurors present. Govt. witness Cross resumes stand. Govt. Ex. #57 thru 63 made full exhibits. By agreement of counsel, Juror Mr. Kent will be excused on Tuesday (8/3/76) if 12 other jurors are present. 3:55 P.M. Court adjourned to 7/30/76 at 10:30 A.M. Zampano, J. m-7/30/76.
7/30	AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: 11:30 A.M. Govt. rests in absence of jury. Defendants move for judgment of acquittal - denied. Deft. Amendola's motion to strike testimony of Agent Connolly - denied. 13 jurors present. 12:03 P.M. Govt. rests in presence of jury. One witness for deft. Valeriano sworn and testified. 12:22 P.M. Both defendants rest. Defendants' renewed motions - denied. 12:30 P.M. Court adjourned to 8/3/76 at 9:30 A.M. Zampano, J. m-7/30/76.
7/30	Court Reporter's Sound Recording of Proceedings DISP and COP held on July 12, 1976, filed. Gale, R.
8/2	Court Reporter's Sound Recording of Proceedings (COP) held on May 10, 1976, filed. Russell, R.
8/3	Jury Trial Continues 9:45 to 9:59 A.M. Govt. opens. 9:59 A.M. to 10:22 A.M. Deft. Valeriano closes. 10:22 to 10:48 A.M. Deft. Amendola closes. 10:48 to 10:56 A.M. Govt rebuttal. 11:37 to 12:35 P.M. Court charges the jury. 12:35 P.M. Jury retires to jury room. Deft. Amendola takes exception to the charge, no further charge to be given.

DATE	PROCEEDINGS
1976	
8/3	cont'd. 12:49 P.M. By agreement of counsel all full exs. and Indictment delivered to jury by Marshal and deliberation begin. 2:10 P.M. Note from jury requestion tape ræorders. 2:23 P.M. Jury returns to jury room with tape recorders brought to them by Marshal. Court Exs. one and two marked for ID. 4:35 P.M. Note from jury re: hung jury on one deft. Both deft's move to discharge jury, denied. 4:38 P.M. Jury returns verdict as to deft. VALERIANO: Guilty as charged. 4:43 P.M. Jury returns to jury room to continue deliberation as to Amendola. 5:50 P.M. Jury excused until 9:30 A.M. of 8/4/76. 5:52 P.M. Court adjourned. Zampano, J. m-8/4/76.
8/4	JURY TRIAL CONTINUED: 9:15 A.M. Exhibits and recorders brought to jury room by Clerk. 9:30 A.M. 12 jurors continue deliberations. 10:43 A.M. Note from jury requestion headphones. Deft. Amendola moves for mistrial-denied. 10:45 A.M. Jurors return to Courtroom and hand Court second note re: hung jury. 10:48 Jury retires to jury room. Deft. Amendola renews motion for mistrial, motion is granted. 11:00 A.M. Jury returns to Courtroom. Court advises jury of mistrial. 11:05 A.M. Jury excused subject to call. Court exs. 4 & 5 marked for ID. 11:07 A.M. Court adjourned. 11:15 A.M. In chambers: oral motion of govt for return of exs. granted w/o objection. 2:10 P.M. All govt. exs. given to F.B.I. and receipt acknowledged. Zampano, J. m-8/4/76.
8/6	AMENDOLA: Notice of Readiness, filed by govt.
8/6	BROWN: Court Reporter's Notes of Proceedings (DISP) held on July 12, 1976, filed. Gale, R.
8/11	VALERIANO: Notice of Appeal, filed by deft.
8/12	VALERIANO: Certified copy of Notice of Appeal and docket entries mailed to the Clerk, U.S.C.A. copies of notice of appeal mailed to counsel or record.
8/25	Court Reporter's Notes of Proceedgins (trial) held on July 20, 21, 22, 23, 27, 28, 29, 30, and August 3 & 4, filed. Gale, R.
9/1	Deft. Amendola's Supplemental Request to Charge, filed.
9/13	DISPOSITION: KINSLER: Impr. one year, suspended forthwith and deft. placed on probation for a period of four years. Count Two dismissed on oral motion of US. Attorney. Zampano, J. m-9/14/76.
9/13	DISPOSITION: FURMAN: over to Sept. 27, 1976. Zampano, J. m-9/15/76
9/13	DISPOSITION: BELL: Impr. 2 yrs on Ct. one, suspended forthwith and deft placed on probation for four years. Ct. two dismissed by the Court on oral Motion of the U.S. Atty. Zampano, J. m-/9/15/76
9/13	DISPOSITION: ADAMS: Impr. two years on Ct. one, suspended forth with and deft. is placed on probation for a period of four years. Ct. two dismissed by the Court on the oral motion of the US. Atty. Zampano, J. m-9/15/76.
9/13	DISPOSITION: VALERIANO: Impr. two years on Ct. one. Imposition of sentence is suspended on Ct. two and the deft. is placed on probatio for four years. Said sentence to run consecutively to the sentence imposed on Count One. Court advises deft of his appeal right. Deft. released on his own recognizance pending appeal. If no appeal is taken deft is to surrender himself to the U.S. Marshal in New Haven, within 10 days. Zampano, J. m-/9/14/76.
9/13	KINSLER: Notice of Appeal, filed by deft.
9/14	AMENDOLA: On RCZ's Jury Assignment List: Ready #4. Jury will not be picked today. Zampano, J. m-9/15/76.
9/15	VALERIANO: Judgment and Commitment, filed and entered. Zampano, J. m-9/15/76. Two cert. copies handed to U.S. Marshal for service.

DATE	PROCEEDINGS
1976	
9/15	KINSLER: Judgment and Order of Probation, filed and entered. Zampano, J. m-9/16/76. Two cert. copies handed to U.S. Probation Officer
9/16	BELL: Judgment and Order of Probation, filed and entered. Zampano, J. m-9/16/76. Two cert. copies handed to U. S. Probation Officer
9/16	ADAMS: Judgment and Order of Probation, filed and entered. Zampano, J. m-9/16/76. Two cert. copies handed to U.S. Probation Officer.
9/16	KINSLER: Notice of Appeal endorsed: Motion to Proceed in forma pauperis is granted. Zampano, J. m-9/16/76. copies mailed to counsel of record and certified copy of docket entries and Notice of Appeal mailed to Clerk, U.S.C.A.
9/16	VALERIANO: Notices of Appeal, filed by deft. Certified copy of Notice of Appeal and docket entries mailed to U.S.C.A on 9/17/76
9/13	Court Reporter's Notes of Proceedings (DISPS) held on Sept. 13, 1976 filed. Gale, R.
9/20	BELL: Notice of Appeal, filed by deft.
9/21	BELL: Notice of Appeal endorsed: Motion to Proceed in Forma Pauperis on appeal is granted. Zampano, J. m-9/21/76. copies mailed to counsel of record and certified copy of docket entries and Notice of Appeal mailed to U. S. C. A.
9/23	KINSLER: CJA Form 20 executed and approved, Zampano, J. copies mailed to A.O. for payment.
9/27	DISPOSITION: Over to Oct. 4, 1976. Zampano, J. m-9/27/76.
9/27	BELL: Letter from Atty. Gerald P. Dwyer to Sylvester A. Markowski Clerk requesting that appeal be withdrawn, filed and endorsed: Motion to Withdraw Appeal granted. Zampano, J. m-9/29/76. copies mailed to counsel and certified copy mailed to U.S.C.A.
9/27	CJA Form 20 executed and approved. Zampano, J. copies mailed to counsel, and A.O. for payment.
10/4	FURMAN: DISPOSITION: Over by agreement. Zampano, J. m-10/4/76
10/1	Court Reporter's Sound Recording of Proceedings (DISP) held on 9/13/76, filed. Gale, R.
10/1	Record on Appeal sent U.S. Court of Appeals. Copies of Index sent counsel of record.
10/6	Motion to Dismiss, filed by the deft. (AMENDOLA)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN THE MATTER OF THE APPLICATION OF :
THE UNITED STATES OF AMERICA FOR :
AN ORDER AUTHORIZING THE INTERCEPTION :
OF WIRE AND ORAL COMMUNICATIONS :

A F F I D A V I T

Raymond A. Connolly, Special Agent of the Federal
Bureau of Investigation, United States Department of Justice,
being duly sworn deposes and states:

1. I am a Special Agent of the Federal Bureau of
Investigation and have continuously held that position for the
past twenty-five years. I have been assigned to the investigation
of gambling matters within the jurisdiction of the Federal Bureau
of Investigation for approximately five years and during the time
have been involved in more than eighty separate and distinct
gambling investigations. As a result of this experience, I have
had the opportunity to examine the records commonly used by
bookmakers.

2. I am an investigative or law enforcement officer of
the United States within the meaning of Title 18, United States
Code, Section 2510 (7), that is, an officer of the United States
who is empowered by law to conduct investigations of, and make
arrests for offenses enumerated in Title 18, United States Code,
Section 2516.

BEST COPY AVAILABLE

2. I have been involved in the investigation of the gambling activities of DANIEL VALERIANO, also known as the "Hawk", since September 8, 1971. As a result of my personal participation in this investigation and as a result of information furnished to me by other Special Agents of the Federal Bureau of Investigation participating in the investigation, I am familiar with the circumstances of the offenses involved. I therefore, allege the following facts contained in the numbered paragraphs below to show that:

a. There is probable cause for belief that DANIEL VALERIANO, also known as the "Hawk", CHARLES FURMAN, FRANK GUNN, CATHERINE BROWN, also known as Catherine Jones, and an individual known only as "ALFIE", and others as yet unknown have been and are now presently engaged in an illegal gambling business which makes use of communications facilities for the purpose of conducting an illegal gambling business which involves five or more persons and that has a gross revenue of \$2,000 in any single day and has been in substantially continuous operation for 30 days. This illegal gambling business is conducted in violation of the Connecticut Public Act 865 (1972) and is thereby in violation of Section 1955 of Title 18, United States Code.

b. There is probable cause for belief that evidence of these offenses will be obtained through the interception of wire communications, authorization for said interception being herein applied for.

2. There is probable cause to believe that telephone number 203-624-8802 subscribed to by DANIEL VALERIANO, 58 Dixwell Avenue, New Haven, Connecticut, number 203-756-0836 subscribed to by Mrs. AURELIA GUIDER, 11 Simsbury Street, Waterbury, Connecticut, and number 203-865-5288 subscribed to by CATHERINE JONES, 30 Park Lane, Apartment 404, Hamden, Connecticut, have been and are being and will be used in carrying out the offenses set out in paragraph 1(a) above, all of which appears more fully hereafter.

3. Normal investigative techniques such as physical surveillance and examination of the records obtainable regarding DANIEL VALERIANO has failed to gather sufficient evidence and offers little probability of securing sufficient evidence to sustain prosecution for violation of the offenses and reasonably appear unlikely to succeed. Therefore, the interception of these telephone communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove violations of Title 18, United States Code, Sections 1955 and 371.

4. This application seeks authorization to intercept wire communications concerning offenses involving violations of Sections 1955 and 371, Title 18, United States Code.

FACTS AND CIRCUMSTANCES

5. From my experience in the investigation of gambling offenses, I know that a policy operation structure consists primarily of a "main bank" that is, the individual running the operation. Under the "main bank" will be "controllers", that is individuals controlling the actual daily "play" and who are in

contact with the main bank. Under the controllers are the individual runners, i.e., the men on the street who actually take the policy bets and call these bets into the controller. The "controllers" then tally these bets according to runner, usually using a code designation for each runner rather than the runner's name, for example, "R-2". At the end of the betting day the controller will tally all runners and call these into the main bank. The main bank will keep a daily tally of each controller as to amount of bets accepted, amount won by bettors, i.e. "hits", and amount due to each controller or to the main bank depending upon the number of hits. Usually a settling up is done on a weekly basis. The main bank is usually in contact with only the controllers, who insulate the main bank from the runner who actually accepts the bet.

A policy bet is a bet wherein a bettor selects one or more three digit numbers from 000 to 999. The winning number of the day is determined by totaling the parimutual payoff of the first three races from the nearest class A race track selected beforehand by the policy operation. The figures to the left of the decimal point separating the dollar from the cent figure is the first number for the day. For example, if the total figure of the winnings of the win, place, and show bets for the first three races was \$326.72, the first policy number would be six. The same total for the fourth and fifth races is added to the first three races to obtain the second policy number and the same total of the sixth and seventh races is added to the first five races in order to obtain the third or last policy number for

the day. The bettor can choose to bet all three numbers, two numbers or one number or a combination of numbers, betting from ten cents to any number of dollars. The bettor wins when the number he bets comes out in the order in which he bets them for that day. He may choose to bet a combination of these three numbers, in which case, at lesser odds, he need only pick the three winning numbers in no given order.

Based upon my experience in investigating gambling offenses as set forth in paragraph one, I further know that in the New Haven area of Connecticut, the payoff for a three number hit is "500 to 1", for a two number hit "50 to 1" and for a one number hit "3 to 1". On each hit the runner is entitled to 10% of the hit. For example, if an individual bets \$1.00 and hits the number for \$500 the runner would receive 10% or \$50 and the winner would receive \$450. The coordinators are paid 10% to 15% of all the wages that their runners relay to them.

Investigation as set out in Section 6 below indicates that DANIEL VALERIANO operates a main policy bank in Waterbury, Connecticut, and FRANK GERN, CHARLES FURMAN, CATHERINE BROWN, and ALFIE (last name unknown) are controllers in this policy operation.

Investigation also reflects that ELLSWORTH BELL is handling a numbers policy operation in the New London, Connecticut, area, and turns his action into an unknown individual in New Haven, Connecticut. Investigation also reflects that there is a large volume

of telephone calls between BELL's residence in New London, Connecticut and VALERIANO's residence in New Haven, Connecticut.

5. Commencing on or about October 4, 1972, and continuing to the present date, a confidential informant (informant number 1) furnished the following information to Sergeant Vincent DeRosa, New Haven Police Department:

Informant number 1 stated that he has had personal conversations with DANIEL VALERIANO during October, 1972, and during these conversations, VALERIANO stated that his numbers policy action is doing a business in excess of \$25,000 per week.

Informant number one advised that he is personally associated with the gambling operation of DANIEL VALERIANO as set forth hereafter.

Informant number 1 advised Sergeant Vincent DeRosa on October 4, 1972, that he had conversations with DANIEL VALERIANO during September, 1972, and during these conversations, VALERIANO advised informant number 1 that FRANK GUNN, CHARLES FURMAN, CATHERINE BROWN, and an individual only known as "ALFIE", were coordinators of this policy operation and were subordinates of DANIEL VALERIANO.

Informant number 1 advised on November 10, 1972, that VALERIANO conducts this policy operation from his residence at 53 Dixwell Avenue, New Haven, Connecticut, and utilizes telephone number 624-3802 at this address to contact his subordinates in this

gambling operation. Informant number 1 added that VALERIANO told him during the latter part of October, 1972, that he utilizes this location during the morning hours six days a week excluding Sunday and leaves his residence at 53 Dixwell Avenue, New Haven, Connecticut, at approximately 12:00 P.M. each weekday and proceeds to the City of Waterbury, Connecticut, where he enters a place unknown to the informant, and from which he directs his policy operation. Informant number 1 also advised that during these conversations DANIEL VALERIANO admitted he utilizes "flash paper" in conjunction with his policy operation and distributes "flash paper" to those individuals involved in this operation for the purpose of instantly destroying all evidence thereby avoiding arrest and to avoid the police from ascertaining the identity of the persons involved.

Observations by members of the New Haven Police Department reflect that either DANIEL VALERIANO himself or his vehicle, a 1967 Cadillac bearing Connecticut registration UT203 or both were observed parked in the vicinity of 11 Sinsbury Street, Waterbury, Connecticut, on October 16, 17, 18, 19, 20, 1972, and November 2, 3, 10, 1972, during the afternoon hours.

The Waterbury, Connecticut, City Directory reflects that JOSEPH GUIDER resides at 11 Sinsbury Street, Waterbury, Connecticut, telephone number 756-9836.

Informant number 1 advised Sergeant DeRosa on November 15, 1972, that during the months of October and November, 1972, he has been the recipient of many telephone calls from VALERIANO in Waterbury.

Connecticut, during which time he has personally discussed policy business with VALERIANO.

Informant number 1 advised Sergeant DeRosa on November 14, 1972, that during the months of October and November, 1972, he has had numerous contacts with CHARLES FURMAN at telephone number 865-5283, listed to C. JONES, 30 Park Lane, Hamden, Connecticut. Informant number 1 further advised that during the course of these conversations with FURMAN, they discussed VALERIANO's policy operation. Informant number 1 also advised that on these occasions, FURMAN told him that CATHERINE BROWN, also known to him, informant number 1, as CATHERINE JONES, assisted him at this location in handling his part of the aforementioned policy operation and in his absence, he informant number 1, could freely discuss the policy operation with BROWN. Informant number 1 further advised that FURMAN told him that he was operating an office at this location utilizing telephone number 865-5283 and answers directly to DANIEL VALERIANO. Informant number 1 further advised on November 14, 1972, that he has personally placed policy wagers with FURMAN and BROWN at the above number during October and November, 1972.

The records of the Southern New England Telephone Company reflect that telephone number 865-5283 is listed to CATHERINE JONES, Apartment 404, 30 Park Street, Hamden, Connecticut. Informant number 1 further advised that during the past two months, and as late as November 30, 1972, he has given policy bets to FURMAN and JONES at telephone number 865-5283.

Informant number 11 advised Sergeant DeRosa on November 30, 1972, that DANIEL VALERIANO told him on several occasions during October, 1972, that FRANK GUNN was operating as a controller for him in the aforementioned policy operation in the New Haven, Connecticut, area.

Informant number 1 also advised Sergeant DeRosa on November 15, 1972, that FRANK GUNN told him in November, 1972, that he was operating a policy office for VALERIANO in New Haven, Connecticut. Informant number 1 advised that during September, October, and November, he heard FRANK GUNN and DANIEL VALERIANO discussing the policy operation in his presence. Informant number 1 advised that on these occasions, VALERIANO and GUNN stated that GUNN settles his policy operation with VALERIANO at VALERIANO's residence, 58 Dixwell Avenue, New Haven, Connecticut.

Informant #1 advised Sergeant VINCENT DE ROSA on December 22, 1972, that DANNIE VALERIANO contacted him on December 21, 1972, at which time he stated he, VALERIANO, was in Waterbury, Connecticut, and during the course of this conversation they discussed the policy operation. Informant #1 further advised that VALERIANO at this time told him that he continues to operate his policy operation from his residence at 58 Dixwell Avenue during the morning hours.

Informant #1 advised Sergeant DE ROSA on December 22, 1972 that he was in telephonic contact with CHARLES FURMAN and CATHERINE BROWN at telephone number 865-5288 on December 21, 1972, at which time they discussed the policy operation and at this time FURMAN

indicated that he was still utilizing his telephone for gambling purposes and continues to work for VALERIANO.

Informant #1 advised Sergeant DE ROSA on December 22, 1972, that he had personal conversation with FRANK GUNN on this date and GUNN informed him that he continues to accept bets for VALERIANO.

Informant #1 advised Sergeant DE ROSA on December 22, 1972, that ALFIE LNU telephonically contacted him at 1:30 P.M. on December 21, 1972, at which time he, informant #1, furnished to ALFIE the numbers being placed for this particular day.

Rel
According to the Sergeant Vincent DeRosa, New Haven Police Department, information provided by Informant Number One has been substantiated and found on each occasion to be accurate and reliable.

Informant number 1 advised Sergeant DeRosa on October 6, 1972, that DANIEL VALERIANO told him approximately six months ago to give all his action to an individual who would contact him telephonically each day and identify himself as "ALFIE". Informant number 1 advised that thereafter an individual identifying himself as "ALFIE" telephonically contacted him at approximately 1:15 P.M. each weekday and on these occasions informant number 1 furnished to "ALFIE" and continues to furnish the policy numbers being placed for that particular day.

Beginning in 1964, and continuing to the present date, a confidential informant (informant number 2) furnished the following information to Sergeant Vincent DeRosa, New Haven Police Department:

Informant number 2 has provided reliable information in the past to Sergeant DeRosa, which information has resulted

in three arrests and convictions in gambling matters. Informant number 2 advised on November 21, 1972, that he is personally acquainted with FRANK GUNN and has placed policy bets with him during November, 1972.

7. Records of the Southern New England Telephone Company, 227 Church Street, New Haven, Connecticut, reveal that telephone number 203-624-3802 is subscribed to by DANIEL VALERIANO, 53 Dittell Avenue, New Haven, Connecticut. Telephone number 203-443-3505 is subscribed to by V. ALLEN, 23 West Street, New London, Connecticut; telephone number 203-756-0836, is subscribed to by AURELIA GUIDER, 11 Sinsbury Street, Waterbury, Connecticut; telephone number 203-865-5233 is subscribed to by C. JONES, 30 Park Lane, Hamden, Connecticut, Apartment 404.

8. An analysis of long distance calls charged to telephone number 203-624-3802 subscribed to by DANIEL VALERIANO for the period March 17, 1972, to September 17, 1972, reflects that telephone number 203-443-3505, subscribed to by V. ALLEN was called sixteen (16) times.

An analysis of long distance calls charged to 203-443-3505 subscribed to by V. ALLEN for the period September 1, 1972 to September 30, 1972, reflects that telephone number 624-3802 listed to DANIEL VALERIANO was called 50 times.

An analysis of long distance telephone calls charged to telephone number 756-0836, subscribed to by AURELIA GUIDER,

11 Simsbury Street, Waterbury, Connecticut, reflects that from March 25, 1972, to September 19, 1972, that 95 calls were made to telephone number 238-7343, 90 calls to telephone number 238-7400, 54 calls to telephone number 734-4664, 138 calls to telephone number 734-2662, 107 calls to telephone number 865-9705, and fourteen telephone calls to telephone number 248-2088.

Investigation at New London, Connecticut, reflects that ELLSWORTH P. BELL is currently residing at 23 West Street, New London, Connecticut, with VERONICA ALLEN and is using telephone number 442-8505 at this location.

Commencing in February 21, 1972, and continuing to the present time a confidential informant (informant number 3) furnished the following information to Special Agent Thomas M. Murphy of the New Haven Office of the Federal Bureau of Investigation.

Informant number 3 in the past has provided reliable information which has been confirmed by independent investigation consisting of surveillances, analysis of telephone toll calls and other investigative techniques. Information from informant number 3 and information establishing his reliability, has been received by Special Agent Thomas M. Murphy of the New Haven Office of the Federal Bureau of Investigation. Informant number 3 advised on November 8, 1972, that he is personally acquainted with ELLSWORTH

BELL and from conversations with BELL over the past six years up to and including November 8, 1972, BELL has informed him that he is a coordinator of a policy operation in the New London, Connecticut area. During this period of time BELL has told informant number 3 that he has several runners working for him in the New London, Connecticut, area and that he, BELL, supplies these runners with "flash paper" to record the policy bets and that he, BELL, subsequently turns this policy information in to an individual, whom BELL did not identify, in New Haven, Connecticut.

Sergeant Vincent DeRosa, New Haven Police Department, New Haven, Connecticut, on November 21, 1972, advised that the records of that department reveal the following arrests concerning the following individuals.

DANIEL VALERIANO was arrested on September 13, 1948, for keeping lottery tickets and selling lottery tickets. These records further reflected that he was fined in local court \$75.00 and \$100.00 respectively. VALERIANO was arrested by the New Haven Police Department on January 5, 1950, for maintaining premises for the purpose of conducting a lottery, being custodian of horse race bets, and keeping lottery tickets. These records further reflected that he appeared in local court and was fined \$50.00, \$75.00 and \$100.00 respectively for these violations.

CHARLES FURMAN was arrested on December 22, 1969, by the New Haven Police Department for policy playing and on February 11, 1970, in local court he was fined \$500.00. FURMAN

was arrested by the New Haven Police Department on October 5, 1971, and December 14, 1971, for policy playing. He appeared in local court on February 4, 1972, and was fined \$1,000.00 for each of these violations.

FRANK GUNN was arrested on September 21, 1960, by the New Haven Police Department for recording bets, policy playing, and keeping lottery records. He appeared in local court on the above violations,, receiving a sentence of thirty days and was fined a total of \$250.00 for these violations. GUNN was arrested by the New Haven Police Department on June 8, 1963, for policy playing, and subsequently appeared in local court, at which time he was fined \$100.00 and 30 days suspended sentence and placed on probation for one year. GUNN was arrested on March 10, 1965, by the New Haven Police Department for policy playing, subsequently appeared in local court, at which time he was fined \$200.00 and sentenced to 30 days suspended after 10 days. GUNN was again arrested on June 3, 1968, by the New Haven Police Department for policy playing subsequently appeared in local court, at which time he was fined \$1,000.00.

CATHERINE BROWN, also known as Catherine Jones, was arrested on August 1, 1968, by the New Haven Police Department for aggravated assault and received a 60 day suspended sentence and placed on probation for two years.

10. My experience and the experience of other agents of the Federal Bureau of Investigation have shown that even though gambling customers are identified they are unwilling to furnish

information to law enforcement agents or officials inquiring into gambling activities. This is even more true when the customer is a professional gambler himself. Moreover, interviews and/or Grand Jury subpoenas would only serve to put these individuals on notice of pending investigation and severely reduce the potential success of the investigation. Experience has shown that raids and searches of individuals operating a policy book have not in the past resulted in gathering sufficient physical or other evidence to prove all elements of the offenses particularly when individuals involved in the operation do not physically engage in the action of operating the policy action but control and receive proceeds of the operation. Even when records are maintained these records are frequently destroyed immediately prior to a physical search of the premises and usually records which are obtained are coded in order to protect the names of controllers and runners.

The informants mentioned in this affidavit have informed agents of the Federal Bureau of Investigation and officers of the New Haven Police Department that they categorically refuse to testify in any court proceedings because of possible retaliatory actions which might be taken against them.

11. For the reasons set out above, all normal avenues of investigation are either closed or unlikely to succeed, and the only way to develop the necessary evidence of a violation of Title 18, United States Code, Sections 1955 and 371, by DANIEL VA also known as the "Hawk", CHARLES FURMAN, FRANK GUNN, CATHERINE

BROWN, also known as Catherine Jones, and an individual known only as "ALFIE", and others as yet unknown, is to intercept wire communications from (a) telephone number 203-624-8802 subscribed to by DANIEL VALERIANO, 53 Dixwell Avenue, New Haven, Connecticut (b) telephone number 203-756-0836 subscribed to by Mrs. AURELIA GUIDER, 11 Sinsbury Street, Waterbury, Connecticut (c) telephone number 203-365-5238 subscribed to by CATHERINE JONES, 30 Park Lane, Apartment 404, Hamden, Connecticut.

12. No other application is known to have been made to any Judge for authorization to intercept, or for approval of interceptions, of wire or oral communications involving any of the persons, facilities, or places specified in this application.

13. The activity to be electronically intercepted is believed to represent a continuing criminal conspiracy involving DANIEL VALERIANO, CHARLES FURMAN, FRANK GUNN, CATHERINE BROWN, an individual known only as "ALFIE", and others as yet unknown. Therefore, it is requested that interception of these wire communications not terminate when conversations of a gambling nature are first received until it is revealed the manner in which DANIEL VALERIANO, CHARLES FURMAN, FRANK GUNN, CATHERINE BROWN, an individual known only as "ALFIE", and others as yet unknown, participate in the illegal use of interstate telephone facilities for the furtherance of a gambling operation, and in aid of racketeering enterprises and until it is

revealed the identities of their confederates, the places of operation, and the nature of the conspiracy involved therein or for a period of fifteen (15) days from the date of the order, whichever is earlier.

Raymond E. Connolly
Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me

this 15th day of January, 1973.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
FEB 16 9 37 AM '75
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA :

v. :

DANIEL VALERIANO, CHARLES FURMAN, :
CATHERINE BROWN, a/k/a Catherine :
Jones, CLIFTON ADAMS, ELLSWORTH :
BELL, FRANK HINSLER, FRANK AMENDOLA, :
a/k/a "Alfie" :

CRIMINAL NO. N-74-43

RECEIVED
FEB 20 1975
U.S. DISTRICT COURT
NEW HAVEN, CONN.
3720701

MEMORANDUM OF DECISION

In this two-count indictment filed on May 3, 1974, the seven defendants are charged with violating and with conspiring to violate the Federal gambling statutes, 18 U.S.C. §§ 1955 and 371. As is typical in § 1955 cases, the defendants level broad constitutional and statutory attacks against the indictment and wiretap evidence obtained under the provisions of Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§ 2510-2520. In addition, defendant Brown moves to suppress her grand jury testimony, and defendant Bell challenges the search of his home by agents in July, 1973. Finally, the defendants have filed various motions for discovery.

I. The Motions To Dismiss

A. Most of the arguments advanced by the defendants

in support of their motions to dismiss are foreclosed by Judge Blumenfeld's reasoned opinion in United States v. Chiswick, 363 F. Supp. 353 (D. Conn.), aff'd, ___ F.2d ___ (2 Cir. November 11, 1975). Thus, § 1955 is constitutional; the doctrine of pardon and abatement does not bar the prosecution; and, there is no infirmity in the conspiracy count of the indictment based on an application of "Wharton's Rule." Id. at 362-363; see also United States v. Sacco, 491 F.2d 995 (2 Cir. 1974); United States v. Becker, 451 F.2d 230 (2 Cir. 1972), vacated on other grounds, 417 U.S. 203 (1974); State v. Genova, 141 Conn. 565 (1954). Further, since the indictment alleges that the defendants committed certain acts with respect to an illegal gambling business "involving a numbers or policy operation" during a specific period, the use of the term "bookmaking" does not render the indictment vague or legally insufficient. Cf. United States v. DeGennaro, 54 F.R.D. 596, 597 (E.D.Wis. 1972). The indictment contains the requisite specificity to enable the defendants to prepare their defenses and to avoid the danger of being prosecuted again for the same conduct. United States v. Bohron, 346 U.S. 374 (1953).

B. As a further ground for dismissal, the defendant Kinsler severely criticizes the role of a prosecutor in presenting evidence to a grand jury and suggests that

the Magistrate's duties be expanded to include that "of the court's attorney before the grand jury." The defendant's arguments are conclusory in nature, have little or no relevance to the case at bar, and are contrary to controlling law. The government attorney is specifically authorized to appear before a grand jury, Rule 6(d), F. R. Crim. P., and his presence is recognized as essential "to the fact presentation process by which the grand jury reaches its ultimate decision." United States v. Cooper, 464 F.2d 648, 653, (10 Cir. 1972). Moreover, "[a] grand jury proceeding is not an adversary hearing in which the guilt or innocence of the accused is adjudicated," United States v. Calandra, 414 U.S. 336, 343 (1974); therefore, there is no requirement that the prosecutor submit to the grand jury all of the evidence in the government's file. Laraine v. United States, 396 F.2d 325, 339 (9 Cir.), cert. denied, 393 U.S. 933 (1968); Adlonis v. United States, 313 F. Supp. 406, 495 (D.N.J. 1970), aff'd 451 F.2d 49 (3 Cir.), cert. denied, 405 U.S. 936 (1972).

G. Defendants Brown, Adams, and Turmon contend that the indictment must be dismissed as against them because there has been an alleged violation of a policy statement issued by the Department of Justice in 1959 which states:

"After a state prosecution there should be no federal trial for the same act or acts unless the reasons are compelling." The short answer to this contention is that there has been no duplication of prosecution here. While it is true that each of the defendants was prosecuted and convicted of "policy playing" on a single day under Connecticut law, Conn. Gen. Stat. § 53-293, the federal statute with which we are concerned prohibits an illegal gambling business of major proportions involving five or more persons, and one in substantially continuous operation for at least 30 days or with a gross reserve of \$2,000 in any single day. Cf. United States v. Garsen, 467 F.2d 653, 658 (3 Cir. 1972). Also, the penalties under state and federal law significantly differ: the state statute provides for a maximum of six months imprisonment or \$100 fine, or both, while the federal enactment carries a maximum of five years incarceration or \$20,000 fine, or both.

In any event, even assuming there has been a breach of a policy set some years ago by the Justice Department, the defendants point to no statute, rule or regulation that has been breached. As Justice Brennan noted in Petite v. United States, 361 U.S. 529, 533, "the government has reserved the right to apply or not to apply its 'policy' in its discretion."

II. The Motion To Suppress

A. All of the defendants move to suppress the wiretap evidence secured by agents of the Federal Bureau of Investigation. They first allege that the affidavit submitted by Agent Connolly in support of the wiretap application was deficient in that (1) the reliability of the informants was not sufficiently established on the face of the affidavit, and (2) the information set forth was "double hearsay" because it was relayed to Agent Connolly through other law enforcement officers.

It is well established that a magistrate cannot issue a valid search warrant based on an affidavit which contains information supplied to the police by an unidentified informant unless the affidavit states "some of the underlying circumstances from which the officer concluded that the informant . . . was credible or his information reliable." Aguilar v. Texas, 378 U.S. 163, 114 (1964). See also Spinelli v. United States, 393 U.S. 410 (1969); United States v. Garabari, 513 F.2d 269 (2 Cir. 1975). In the instant case, the affidavit recites that the "information provided by informant Number One has been substantiated and found on each occasion to be accurate and reliable", that Informant Number Two "has provided reliable information in the past to Ser-

agent DeRosa, which information has resulted in three arrests and convictions in gambling matters", and that Informant Number Three "in the past has provided reliable information which has been confirmed by independent investigation consisting of surveillances, analysis of telephone toll calls and other investigative techniques." These recitals are sufficient to show the trustworthiness of the informants and to justify reliance on their statements. United States v. Sullivan, 463 F.2d 1066, 1066-1067 (2 Cir. 1972); United States v. Fumicino, 425 F.2d 936, 939 (2 Cir. 1969), cert. denied, 397 U.S. 1032 (1970).

It is true, as the defendants point out, that Agent Connolly did not personally receive the information from the informants. Rather, each informant relayed information to a named police officer who, in turn, transmitted the information to Agent Connolly. While the use of double hearsay in a wiretap application is not to be encouraged, it does not automatically render the affidavit fatally defective. United States v. Fiorella, 466 F.2d 686, 691-692 (2 Cir. 1972). The test to be applied is whether the information furnished by each informant, taken in the light of the totality of the circumstances, can reasonably be said to be reliable. Id. Here, as stated, the informants had pre-

viously given accurate information to the police. In addition, the informants with considerable detail related their personal observations of and contacts with the defendants and extensively described admissions of criminal activity by the defendants. The separate accounts of the three informants tend to corroborate each other and independent investigations by local police and federal agents confirmed several material aspects of the informants' reports. Under these circumstances, the affidavit must be deemed sufficient to support a finding of probable cause for the wiretap order. See United States v. Harris, 403 U.S. 573 (1971); Miller v. Starr, supra; United States v. Smith, 362 U.S. 557 (1960); United States v. Nichols, 403 F.2d 346 (4 Cir. 1970); United States v. Lincoln, supra; United States v. Smith, 465 F.2d 1210 (9 Cir.), cert. denied, 409 U.S. 1073 (1972); United States v. Miller, supra; United States v. Hendrix, 463 F.2d 643 (2 Cir. 1972); United States ex rel. Corbin v. Campbell, 446 F.2d 832 (2 Cir. 1971).

B. The defendants next argue that the wiretap application did not include the requisite "full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too

dangerous." 18 U.S.C. § 2510(1)(c). See also 18 U.S.C. § 2510(3)(c). In support of their position, the defendants cite the conclusory language contained in paragraph 2(d) of the affidavit which merely asserts that normal investigative techniques such as physical surveillance and examination of records have failed to uncover sufficient evidence to sustain a prosecution; and, therefore, "the interception of these telephone communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove violations of Title 18, United States Code, Sections 1555 and 371."

This argument overlooks the factual explanation on pages 11 and 12 of the affidavit concerning the difficulties in employing conventional investigative techniques to the present case. Paragraph 10 of the affidavit reads:

By experience and the conditions of other operations of confidential sources of investigation have shown that even though possible contacts are identified they are unwilling to furnish information to law enforcement agents or officials investigating the criminal activities. This is due to the fact that the source or is a professional "straw man". However, interviews and/or Grand Jury subpoenas

would only serve to put these individuals on notice of pending investigation and severely reduce the potential success of the investigation. Experience has shown that raids and searches of individuals operating a policy book have not in the past resulted in gathering sufficient physical or other evidence to prove all elements of the offenses particularly when individuals involved in the operation do not physically engage in the action of operating the policy action but control and receive proceeds of the operation. Even when records are maintained these records are frequently destroyed immediately prior to a physical search of the premises and usually records which are obtained are coded in order to protect the names of controllers and runners.

The informants mentioned in this affidavit have informed agents of the Federal Bureau of Investigation and officers of the New Haven Police Department that they categorically refuse to testify in any court proceedings because of possible retaliatory tactics which might be taken against them.

A similar statement was found to be in substantial compliance with the mandates of §§ 2510(1)(c) and (3)(c) in United States v. Ashing, 351 F. Supp. 400, 414 (D.M.D. 1972). Further, a comparison of the averments in the Connolly affidavit with narratives upheld in other controlling cases indicates that the defendants' contentions must be rejected. See United States v. Chablon, _____ F.2d _____ (2 Cir. November 10, 1975); United States v. Polanco, 364 F. Supp.

377, 889 (D.N.J. 1973), aff'd 595 F.2d 470 (3 Cir. 1974),
cert denied, 420 U.S. 955 (1975); United States v. Strain,
353 F. Supp. 852 856-857 (E.D.Pa. 1973); United States v.
Imura, 355 F. Supp. 27, 39 (M.D.Fla. 1973); United States v.
Mainello, 345 F. Supp. 863, 873-874 (E.D.N.Y. 1972).

g. In their third ground for suppression, the defen-
dants assail the government's compliance with the require-
ments for the submission of progress reports and the return
and sealing of the wiretaps. On January 15, 1973, Judge
Thomas F. Murphy issued the original wiretap order with a
termination date of January 30, 1973. Under the provisions
of 18 U.S.C. § 2518(3)(a), the government was obligated to
return the recordings and to submit a progress report to
Judge Murphy upon the expiration period of the order. On
January 29, 1973, the government attempted to comply with
the statute but Judge Murphy was not in his chambers.
Thereupon, the agents requested Chief Judge T. Emmet Clarie
to accept the progress report and the recordings for sealing.
Judge Clarie contacted Judge Murphy by telephone and it was
"agreed orally that the Court sitting here in Hartford
should receive this progress report as of today and should
also accept the return of the government as of today and
seal the original tapes as submitted to the Court." Tran-

script of Hearing, January 29, 1973, pp. 7-8. Two days later, Judge Murphy entered an order ratifying the actions taken by Judge Clarie.

Under these circumstances there is no merit to the defendants' claim that the videotape evidence must be suppressed because the return of the progress report and the recordings was accepted by Judge Clarie rather than Judge Murphy. Since Judge Murphy was unavailable, it was proper for the government to seek the assistance of Judge Clarie in order to file a timely return under 2518(3)(a). Cf. United States v. Pesta, 455 F.2d 117, 122 (2 Cir.), cert. denied, 406 U.S. 948 (1972). In any event, even assuming a procedural error, suppression would be inappropriate. The integrity of the tapes is not questioned and the defendants have failed to demonstrate any prejudice from the purported violation of the statute. Cf. United States v. Chevron, 416 U.S. 562, 574-575 (1974); United States v. Falsone, supra; United States v. Iannelli, 477 F.2d 999, 1002 (3 Cir. 1973); United States v. Pesta, supra; United States v. Jaconza, 336 F. Supp. 199, 194 (W.D.Pa. 1971).

B. The defendants further contend they were not served with timely inventories in violation of 18 U.S.C. § 2518(3)(d). That statute requires that, within a reasonable time but not later than 90 days after the termination

of the period of the wiretap order "or extensions thereof", the judge who issued the warrant shall cause an inventory notice to be served on each person named in the order and, in the discretion of the judge, on any other person whose conversation was intercepted.

Here the original wiretap order, naming defendants Valeriano, Brown and Furman, was issued by Judge Murphy on January 15, 1973, with a termination date on or before January 30, 1973. Thus, these defendants argue, the inventories should have been served on or before April 30, 1973. However, on April 25, 1973, in Judge Murphy's absence, Judge Newman authorized an extension of the original order and the service of the inventories until May 25, 1973. Three days prior to the termination date, Judge Murphy granted a further extension of the order and set July 16, 1973 as the final date for the service of the inventories. The government served the notice inventories on these defendants on July 10, 1973.

Despite defendants' contentions, it seems clear that the government complied with the provisions of § 2518(8)(d). The statute specifically allows postponement of the service of notice as a result of extensions of the original wiretap order. Since the defendants received the notice inventories

prior to the deadline date of July 16, 1973, the government was in full compliance with Judge Murphy's May 22, 1973 order. Cf. United States v. Gurneri, 362 F. Supp. 430, 435-436 (D.Md. 1973). See also United States v. Valeriano, Magistrate's Docket No. 2 (D. Conn. November 20, 1973) (Newman, J.).

E. Defendants Kinsler, Bell, Arandola, and Adams, who were unnamed in the application and order but whose conversations were overheard during the interceptions, also argue non-compliance with § 2513(c)(4). The government concedes that these defendants did not receive full disclosure of all relevant documents and materials until July 3, 1974, two months after the indictment in this case was returned by a grand jury. However, it excuses the delay in service on the ground that these defendants were "unknown at the time the wiretap application and order were filed and that, as soon as their identities were confirmed by investigative techniques, they received notice within a reasonable time.

The record before the Court supports the government's position. No evidence has been presented to indicate that defendants Kinsler, Bell, Arandola, and Adams were known to the government, within the meaning of Title III of the Act, so as to require disclosure of their names at the

time the wiretap orders were issued and extended by judges of this District during the first six months of 1973. In fact, as late as February 27, 1974, Agent Connolly informed the grand jury investigating this case that the government was awaiting the results of voice exemplars to establish the identities of certain persons suspected of being overheard, and specifically included these defendants within that category. Subsequently, Agent Connolly reported to the grand jury that the voice tests had been concluded and identifications made. Thereupon an indictment was returned on May 3, 1974. Under these circumstances, since probable cause concerning these defendants may properly be found to be lacking until the spring of 1974, the government was not derelict in failing to reveal their names to the judges who issued and extended the wiretap orders and who established dates for the service of notice inventories. See United States v. Hahn, 425 U.S. 143, 155 (1974); United States v. Harrison, 493 F.2d 464, 468 (6 Cir. 1974); United States v. Tortorello, 400 F.2d 764, 775 (2 Cir.), cert denied, 414 U.S. 366 (1973); United States v. Frizzell, 400 F. Supp. 263, 271-272 (E.D.Tenn. 1975); United States v. Chiarizio, supra, 388 F. Supp. at 367-372.

In any event, even assuming these defendants failed

to receive timely inventories, suppression of the evidence would be unwarranted. Not every failure to comply fully with the requirements of Title III renders the interception unlawful. United States v. Chaver, supra. Unlike the statutory requirement concerning authorization for a wiretap, see United States v. Giordano, 416 U.S. 505 (1974), it does not appear that a post-interception inventory is a central or functional safeguard under Title III which, if tardily furnished, mandates suppression. One of the main purposes of the inventory procedure is to provide notice to those who have had their communications intercepted and to afford any aggrieved person the opportunity to pursue an appropriate remedy. Therefore, in the absence of a showing of prejudice, a failure to serve a timely notice does not require suppression. United States v. Nizzo, 462 F.2d 443, 447 (2 Cir.), cert. denied, 417 U.S. 944 (1974); United States v. Volk, 466 F.2d 1143 (3 Cir. 1972); United States v. Forlano, 358 F. Supp. 56, 59 (S.D.N.Y. 1973). No prejudice has been demonstrated in the instant case. All relevant information, including a complete transcript of the intercepted conversations, has been made available to the defendants for the purposes of pre-trial motions and defenses at trial. Cf. United States v. Cirillo, 499 F.2d 372, 382-383 (2 Cir.), cert. denied, 419 U.S. 1056 (1974). Moreover, there has

been no showing that the government deliberately ignored the notice requirements of the statute or that it failed to file inventories in order to gain a tactical advantage.

United States v. Eastman, 465 F.2d 1057 (3 Cir. 1972)

To suppress the wiretap evidence under these circumstances "would be to unnecessarily undermine and subvert the legislation." United States v. LaSalle, supra, 336 F. Supp. at 124. See also United States v. Deolittle, 516 F.2d 500, aff'd 507 F.2d 1368, 1371-1372 (5 Cir. 1975).

E. Defendant Bell moves to suppress items seized in a search of his premises located at 23 West Street, New London, Connecticut, on the ground that the warrant was issued without probable cause for two reasons: (1) the informant named in the affidavit was not demonstrated to be "reliable"; and (2) the information obtained from the informant was "stale." The contentions are without merit. The affidavit not only contained a statement that the informant had previously supplied accurate information but also certified to independent corroboration of the informant's story. These factors are sufficient to sustain the constitutional propriety of the issuance of the warrant. Aradler v. Texas, supra, 376 U.S. at 114; United States v. Sultan, supra, 463 F.2d at 1068-1069; United States v. Lunsford, supra, 425 F.2d at 639. Moreover, the underlying circumstances set

forth in the affidavit did not suffer from staleness. The affidavit detailed the on-going, illegal business relationship between defendant Bell and defendant Valeriano, and described the doings of the criminal enterprise just a few days before the search. While it is true that probable cause dwindles with the passage of time when the affidavit refers to an isolated violation, the time element becomes less significant "where the affidavit properly recites facts indicating activity of a protracted and continuous nature, a course of conduct. . . ." United States v. Johnson, 461 F.2d 285, 287 (10 Cir. 1972); see also United States v. Hanna, 482 F.2d 1115, 1119 (3 Cir. 1973); United States v. Gorman, 328 F. Supp. 561, 566 (E.D.Pa. 1971), *aff'd*, 470 F.2d 810 (3 Cir. 1972). Viewed in its entirety, the affidavit was sufficient to support the issuance of the search warrant.

2. Defendant Brown moves to suppress her testimony before the grand jury on October 10, 1973, claiming that at the time she was not fully apprised of her rights as required by Miranda v. Arizona, 384 U.S. 436 (1966) and its progeny. Since the government represents that none of the defendants' testimony before the grand jury will be used at trial, the motion is denied, without prejudice.

III. The Discovery Motions

A. With the exception of defendant Valeriano, all the defendants urge for the disclosure of the minutes of the grand jury. Since the defendants have demonstrated no "particularized need", the motions are denied. Rule 6(e), F. R. Crim. P., United States v. Greeter & Lumble Co., 356 U.S. 677, 683 (1958); United States v. Budzinski, 462 F.2d 443, 454 (3 Cir. 1972); cf. United States v. Youngblood, 379 F.2d 365 (2 Cir. 1967). In addition, the defendants' request for an in camera inspection of the grand jury minutes is denied, absent a showing that their Exonera claim possesses any substance. United States v. Pohlman, 482 F.2d 807, 812 (2 Cir.), cert. denied, 414 U.S. 1070 (1973).

B. The defendants' motions for bills of particulars are denied, except that the government shall answer the following requests:

Paragraph No. 7 under Count One;

Paragraphs Nos. 7 and 9 under Count Two;

Nos. 3 and 6 under Overt Acts."

C. The defendant Kinsler's supplemental motion for discovery and inspection is denied; the defendant's argument concerning the authority of the special strike force

attorney to appear and present evidence in this case to the grand jury is foreclosed by the ruling of the Second Circuit in In re Subpoena of Carnica, 522 F.2d 41 (2 Cir. 1975).

Accordingly, it is ordered as follows:

1. All motions to dismiss are denied.
2. All motions to suppress are denied.
3. The motions for disclosure of grand jury minutes are denied.
4. All motions for discovery and inspection are denied.
5. The motions for bills of particulars are denied, with the exceptions noted hereinbefore.

Dated at New Haven, Connecticut, this 17th day of February, 1976.

Robert G. Zarnano
United States District Judge

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U. S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN THE MATTER OF AN APPLICATION FOR :
AN ORDER AUTHORIZING USE OF INTER- :
CEPTED WIRE AND ORAL COMMUNICATIONS :

N.74-48 Criminal
RECEIVED
MAR 16 1976
FILE 62-
A-7

O R D E R

Application under oath having been made before me for an order pursuant to Section 2517(5) of Title 18, United States Code, by the United States, through its attorney, Peter R. Casey, III, United States Department of Justice and an "investigative or law enforcement officer -- of the United States" as defined in Section 2510(7) of Title 18, United States Code, said application having been authorized by the Attorney General of the United States, the Honorable Edward H. Levi, I find that:

1. On January 15, 1973, upon application of Paul E. Coffey, Special Attorney, United States Department of Justice, an order was issued by Judge Thomas F. Murphy, authorizing Agents of the Federal Bureau of Investigation to intercept for a period of fifteen (15) days wire and oral communications of Daniel Valeriano, Charles Furman, Frank Gunn, Catherine Brown, an individual known only as "Alfie", and unknown others to and from telephone numbers 203-624-8802, subscribed to by Daniel Valeriano, and lo-

cated at 58 Dixwell Avenue, New Haven, Connecticut, and 203-865-5288, subscribed to by Catherine Jones, and located at 30 Park Lane, Apartment 404, Hamden, Connecticut, for the purpose of securing evidence that the above-named individuals and unknown others were committing offenses specified in Section 2516 of Title 18, United States Code, to wit: offenses involving violations of Section 1955.

2. During the period of authorized interception; which commenced on January 17, 1973 and terminated on January 27, 1973, Agents of the Federal Bureau of Investigation intercepted wire and oral communications which, it now appears, may provide evidence of offenses not specified in the interception order, that is, offenses involving violations of Title 26, United States Code, Section 7201.

3. At the time of the interceptions specified in paragraph 2 above, there was no reason to believe that such interceptions contained evidence of any violations other than those specified in the Application and order. The conversations of Daniel Valeriano were intercepted pursuant to the original authorized purposes and, insofar as such conversations may now be evidence of offenses involving the Internal Revenue Code, such evidence was "otherwise intercepted" in accordance with the provisions of Chapter 119 of Title 18, United States Code.

WHEREFORE, it is ordered pursuant to the provisions of Section 2517(5) of Title 18, United States Code, that any person who has received, by any means authorized by Chapter 119 of Title 18, United States Code, any information concerning wire and oral communications, or evidence derived therefrom, intercepted over telephone numbers 203-624-8802 and 203-865-5288, pursuant to the orders of Judge Murphy, United States District Court, District

of Connecticut, dated January 15, 1973, but relating to offenses other than those specified in the said order, to wit: violations of Title 26, United States Code, Section 7201, may disclose the contents of said communications and any evidence derived from such communications, while giving testimony under oath or affirmation in any proceeding held under the authority of the United States of America or of any state or political subdivision thereof.

4. Service of this order shall be served upon Daniel Valeriano within five (5) days hereof.

Robert C. Zamp
UNITED STATES DISTRICT JUDGE

Dated: March 15, 1976

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 76-1417

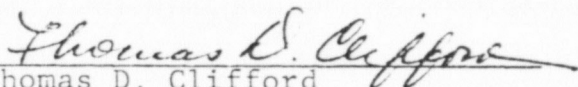
UNITED STATES OF AMERICA
PLAINTIFF-APPELLEE

v.

FRANK KINSLER
DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the defendant's brief and appendix was mailed postage prepaid this 18th day of November, 1976, to the Office of the U.S. Attorney, Federal Building, 450 Main Street, Hartford, Connecticut 06103.


Thomas D. Clifford
Attorney for Defendant
799 Main Street
Hartford, Connecticut 06103
549-4770

